IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 1192 of 2005

Between:

1 T.Ramakrishna (Died),
R/o.Adoni, Kurnool District
2 Smt.T.Janakamma W/o.Late Ramakrishna
R/o.Adoni, Kurnool District and the legal heirs of the 1st petitioner)
3 T.Venugopala Rao S/o.late Ramakrishna
R/o.Adoni, Kurnool District and the legal heirs of the 1st petitioner)
4 T.Satyanarayana Rao S/o.late Ramakrishna
R/o.Adoni, Kurnool District and the legal heirs of the 1st petitioner)
5 T.Mallikarjuna Rao S/o.late Ramakrishna
R/o.Adoni, Kurnool District and the legal heirs of the 1st petitioner)

..... PETITIONERS

AND

1 The Superintending Engineer Irrigation Circle, Kurnool, Kurnool District.
2 The Executive Engineer T.B.P. Division, Adoni, Kurnool District
3 The Executive Engineer, I& CAD., M.I.Works Division (West)
Kurnool, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari issuing Rule nisi and call for the records leading upto inclusive of the proceedings in O.A.No.9452/2001 dt.15.3.2004 read with Review M.A. No.1614/2004 dt.26.11.2004

by quashing the same and pass such other order or orders.

Counsel for the Petitioner: MR.V.MALLIK

Counsel for the Respondents: GP FOR SERVICES-II.

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed challenging the order, dated 15.03.2004 passed by the A.P. Administrative Tribunal in O.A.No.9452 of 2001.

2. The employee Mr.T. Ramakrishna was working as Junior Assistant in Minor Irrigation Works Division Office, Adoni, Kurnool District. While so, the 2nd respondent passed an order, dated 23.07.2001 declaring the period of his absence from 22.05.1998 to 25.09.1998 as Dies Non. Challenging the said order he filed O.A. During the disposal of the O.A. he died and the legal representatives have been brought on record. But the learned Tribunal dismissed the O.A. on the ground that no ground was made for interference with the order of the 2nd respondent. The said order has come to be challenged before this Court.

3. Learned counsel for the petitioner submits that the order, dated 23.07.2001 passed by the 2nd respondent is not sustainable, inasmuch as, no opportunity was given to the petitioner. Secondly, also he submits that when the employee was having sufficient leave to his credit, it is open for the authorities to debit the leave to the extent of the period of absence. If no leave is available, the same has to be treated as without pay, but treating the period of absence as Dies Non, would create a break in service and subsequently, it affects the pension of the employee. Therefore, the order is liable to be set aside, as the learned Tribunal has not taken the pension into consideration.

4. We have heard the learned Government Pleader.

5. The only issue that arises for consideration is whether the order, dated 23.07.2001 passed by the 2nd respondent is sustainable in law.

6. On a perusal of the record, prima facie, we are of the opinion that the order, dated 23.07.2001, is liable to be set aside on the ground of violation of principles of natural justice as admittedly the petitioner was not issued with any show-cause notice before treating the period of absence of the employee as Dies Non. On that ground, without going into other aspects, we are inclined to set aside the order, dated 23.07.2001, passed by the 2nd respondent which was not taken into consideration by the learned Tribunal. Under those circumstances, we are inclined to set aside the impugned order, dated 15.03.2004.

7. However, since the employee died and the Legal Representatives are prosecuting the matter, we deem it appropriate to direct the authorities concerned to debit the leave available to the credit of the employee by treating his absence from 22.5.1998 to 25.9.1998 as leave, and if no leave is available to his credit, the balance period has to be treated as leave without pay.

8. Subject to the above observation, the Writ Petition is disposed of. No costs.

9. It is also brought to the notice of this Court that the pension and other retiral benefits have not been released to the Legal Representatives of the employee. In the wake of the above situation, the respondents are further directed to settle the pension and other benefits, which are entitled to the Legal Representatives of the employee within a period of two months from the date of receipt of a copy of this order.

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G. BIKSHAPATHY, J.

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P.S. NARAYANA, J.

Date: 01.02.2005

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To

1 The Superintending Engineer, Irrigation Circle, Kurnool, Kurnool District.
2 The Executive Engineer, T.B.P. Division, Adoni, Kurnool District
3 The Executive Engineer, I& CAD., M.I.Works Division (West)
Kurnool, Kurnool District.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to the G.P. for Services-II, High Court of A.P., Hyderabad (OUT).

6 2 CD copies.